

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID Q. WEBB,

Plaintiff,

v.

CARSON CITY GOVERNMENT, et al.,

Defendant.

Case No. 3:23-cv-00377-ART-CSD

ORDER ADOPTING REPORT AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE

Pro se Plaintiff David. Q Webb filed this action against Carson City government and deputy district attorneys for an arrest that occurred in 1997. (ECF No. 1.) Magistrate Judge Denney issued a report and recommendation recommending that the Court grant Plaintiff's IFP application, file the complaint, and dismiss the action with prejudice as barred by the statute of limitations. (ECF No. 3.) Plaintiff filed an objection. (ECF No. 4.) The Court overrules Plaintiff's objection and adopts Judge Denney's report and recommendation in full.

I. STANDARD OF REVIEW

Under the Federal Magistrates Act, a Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). A court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

II. FACTS

The Court adopts the factual allegations made in Plaintiff's complaint as recited in the report and recommendation and includes them here for completeness. (ECF No. 4 at 3-5.)

1 Plaintiff sues Carson City government and deputy district attorneys (at the
2 time of the alleged events giving rise to Plaintiff's claims) Anne M. Langer,
3 Raymond E. Oster, and Melanie F. Bruketta. He alleges that Langer, Oster, and
4 Bruketta were deputy district attorneys involved in prosecuting him for
5 obstructing a police officer in 1997.

6 In Count I, Plaintiff sues the Carson City government for violation of 42
7 U.S.C. § 2000d, Title VI of the Civil Rights Act of 1964. He claims that the Carson
8 City government had a custom, policy or practice of falsely imprisoning and
9 maliciously prosecuting persons without probable cause and that he was
10 intentionally discriminated against because he is an African American.

11 In Count II, Plaintiff alleges that the Carson City government, Oster,
12 Langer, and Bruketta violated his rights under 42 U.S.C. § 1983. In Counts III
13 and IV, Plaintiff alleges that Oster, Langer and Bruketta violated his rights under
14 the Fourth and Fourteenth Amendments. In Count V, Plaintiff asserts that
15 Langer, Oster, and Bruketta violated his rights under 42 U.S.C. § 1985
16 (conspiracy to interfere with civil rights) by conspiring to deprive him of equal
17 protection of the laws. In Count VI, Plaintiff alleges that Langer, Oster, and
18 Bruketta violated his rights under 42 U.S.C. § 1986 (action for neglect to prevent).
19 In Count VII, Plaintiff contends that Carson City Government is vicariously liable
20 for the conduct of Oster, Langer and Bruketta pursuant to NRS 41.475.

21 Plaintiff's claims stem from allegations that on June 27, 1997, Plaintiff was
22 erroneously arrested for various traffic offenses and obstructing a police officer
23 after he was initially thought to be the suspect involved in a car and foot chase
24 involving Deputy Sloan. After his arrest, Plaintiff asserts that Deputy Sloan
25 informed Bruketta that he no longer thought Plaintiff was involved in the car or
26 foot chase. Nevertheless, Plaintiff was not released from jail until July 16, and
27 the charges were not dropped. On August 15, 1997, Plaintiff met with Oster, who
28 told Plaintiff if he pleaded guilty to the obstruction charge, Oster would drop the

1 traffic charges, but Plaintiff refused. A week later the traffic charges were
2 dropped, but the District Attorney's Office proceeded with the obstruction charge.
3 Then, Langer took over prosecution of the obstruction charge. Plaintiff claims that
4 on September 3, 1997, Langer offered to drop the obstruction charge if Plaintiff
5 signed a waiver of civil liability. Plaintiff refused. In October 1997, Plaintiff went
6 to trial on the obstruction charge, and he was acquitted. Plaintiff filed this
7 complaint on July 31, 2023. Plaintiff includes with his complaint a copy of a
8 decision from the Ninth Circuit, *Webb v. Sloan*, 330 F.3d 1158 (9th Cir. 2003).

9 According to the Ninth Circuit decision, shortly after Plaintiff was
10 acquitted, he filed a complaint including claims for violation of the First
11 Amendment right to seek redress of grievances; violation of the Fourth
12 Amendment's prohibition against unlawful seizure, due to his arrest,
13 imprisonment, and subsequent prosecution; a general violation of his civil rights
14 caused by the initiation and pursuit of prosecution without probable cause; a
15 conspiracy to commit those federal civil rights violations; false arrest, abuse of
16 process and malicious prosecution under state law; intentional infliction of
17 emotional distress; and due process claims. *Webb v. Sloan*, 330 F.3d 1158, 1163
18 (9th Cir. 2003). At trial, the jury found in favor of Sloan on all counts, but in favor
19 of Plaintiff against Carson City. *Id.* The jury found Carson City had a custom,
20 policy or practice that violated the right not to be prosecuted without probable
21 cause, and a custom, police, or practice to falsely imprison individuals. *Id.* They
22 found that Sloan did not falsely arrest Plaintiff, but that Carson City falsely
23 imprisoned, maliciously prosecuted, and committed abuse of process against
24 Plaintiff under state law. *Id.*

25 **III. DISCUSSION**

26 **A. IFP Application**

27 The report and recommendation first recommends that Plaintiff's IFP
28 application be granted because a review of his application reveals that Plaintiff

1 cannot pay the filing fee. (ECF No. 3 at 1-2.) Plaintiff has not objected to this
2 portion of the report and recommendation. The Court therefore grants Plaintiff's
3 IFP application.

4 **B. Statute of Limitations**

5 The report and recommendation finds that Plaintiff's claims are barred by
6 the statute of limitations because Plaintiff's claims accrued, at the latest, in
7 October 1997, when he was acquitted of the obstruction charge. (ECF No. 3 at 6.)
8 The report and recommendation explains that the statute of limitations for claims
9 brought under Section 1983, Section 1985, and Title VI of the Civil Rights Act of
10 1964 in Nevada is two years. *See Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir.
11 2012); Nev. Rev. Stat. 11.190(4)(e); *McDougal v. County of Imperial*, 942 F.2d 668,
12 673-74 (9th Cir. 1991), *overruled on other grounds by Lingle v. Chevron U.S.A.,*
13 *Inc.*, 544 U.S. 528 (2005) (section 1985); *Taylor v. Regents of Univ. of Cal.*, 993
14 F.2d 710, 712 (9th Cir. 1993) (Title VI).

15 Plaintiff objects to the report and recommendation's finding that his claim
16 accrued in 1997, arguing that statute of limitations instead began when
17 attorney's fees were resolved in April 2009. (ECF No. 4 at 3.) "A statute of
18 limitations begins to run on the date on which the plaintiff's claim 'accrues.'" *Pouncil v. Tilton*, 704 F.3d 568, 573 (9th Cir. 2012) (citation omitted). "A federal
19 claim accrues when the plaintiff knows or has reason to know of the injury that
20 is the basis of the action." *Id.* at 574. Plaintiff had reason to know of the injury
21 that is the basis for this action in 1997, when he was acquitted of the obstruction
22 charge. Even if it were true that Plaintiff's claims accrued in 2009, Plaintiff's
23 claims would still be barred by the two-year statute of limitations.

24 **C. Plaintiff's Claim for "Fraud-Upon-The-Court"**

25 Plaintiff also objects to Judge Denney's failure to address his claims for
26 "fraud-upon-the-court." (ECF No. 4 at 1-3.) Because Judge Denney properly
27 concluded that this claim was untimely, he was justifying in not addressing it.
28

1 Plaintiff argues that this case “would be litigated in accordance with *Hazel-Atlas*
2 *Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).” That case, which involved
3 fraud on the Patent Office, addressed the power of a Circuit Court of Appeals to
4 vacate its judgement upon proof that fraud was perpetrated on it by a successful
5 litigant. *Id.* at 239. Plaintiff appears to argue that fraud occurred in his Ninth
6 Circuit case, *Webb v. Sloan*, 330 F.3d 1158 (9th Cir. 2003), but has not presented
7 any evidence to support that assertion. The Court therefore overrules this
8 objection.

9 **IV. CONCLUSION**

10 It is therefore ordered that Plaintiff’s objection (ECF No. 4) is OVERRULED
11 and Judge Denney’s report and recommendation (ECF No. 3) is adopted in full.

12 Accordingly:

13 Plaintiff’s IFP application (ECF No. 1) is GRANTED.

14 The Clerk of Court is ordered to FILE the complaint (ECF No. 1-1).

15 This action is DISMISSED with prejudice.

16 The Clerk of Court is directed to ENTER JUDGMENT accordingly.

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18 DATED THIS 20th day of November 2024.

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21
22 ANNE R. TRAUM
23 UNITED STATES DISTRICT JUDGE
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